

**From:** Michael Roberts [mroberts@Graydon.com]  
**Sent:** Tuesday, April 27, 2004 5:18 PM  
**To:** William R. Ellis  
**Cc:** Michael Roberts; ematan@mgwlaw.com  
**Subject:** RE: Jefferson-Pilot v. Kearney

Big Brother taking up the sword of civility? How about professionalism, ethics, and the truth, too while your at it since you have no regard for those either!!

I have filed proper notices of deposition and expect to see you and your witnesses here tomorrow, absent the entry of a protective order or other agreed arrangement. Any agreed arrangement must at minimum include firm dates to depose all requested witnesses in Cincinnati (including Geraldine Johnson since any privilege has been waived: Doc. 29, Exh. 6) so that their depositions are concluded by May 15.

We simply will NOT proceed with Mr. Miller's deposition or Mr. Kearney's deposition absent such an agreement. I will absolutely NOT allow you to proceed with the depositions of Messrs. Miller and Kearney prior to the MSJ hearing (and after the discovery deadline) and also allow you to delay depositions I have requested of JP and DMS until after the hearing or decision which could be months from now. The court and all counsel involved in this case agreed to a discovery schedule - Big Brother can't unilaterally change it.

We have not and do not agree to produce Mr. Miller and won't produce him absent this agreement. Accordingly, before you waste a trip to California, I suggest you show up tomorrow or finally give us dates for these depositions which have only been sought for 8 months.

Your pal,  
Mike

Michael A. Roberts  
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>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/27/04 05:03PM >>>

Mr. Roberts, I will set up the deposition of Mr. Kearney for the 10th per your schedule. I will oppose the deposition of trial counsel for the plaintiff for the obvious reasons. She is not a witness to this case and should not be noticed for deposition. If I have missed something that makes her a witness, please advise and I will discuss the issue with her. Thank you for your cooperation. I am still willing to work with you on the depositions you wish to take, however, I will object to those witnesses whose deposition is inappropriate such as Mr. Dempsey, Mr. Bonsal, and anyone whose involvement ended over 4 years ago. I have called the client and am awaiting their reply as to the involvement of the listed witnesses and their current status and availability. We have the time to do this even after the argument on the motions for Summary Judgment and doing so may save both of our clients a significant amount of money and time relative to any possible remaining claims. Please give this idea some consideration. I see that the idea of civility is still something that is still of no interest to you, but I again request that you consider amending your approach so that neither client suffers greater expense than is necessary.

-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Tuesday, April 27, 2004 4:25 PM  
To: Christy L. Zerges  
Cc: Michael Roberts; ematan@mgwlaw.com; William R. Ellis  
Subject: Re: Jefferson-Pilot v. Kearney

Tell Big Brother that the 6th and 7th are out, but I can do the 10th. Also provide me with a date to take Geraldine Johnson's deposition before May 15. If I do not receive a response concerning Ms. Johnson, I will issue a notice for Friday. Sincerely, Mike

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>>> "Christy L. Zerges" <CLZerges@WoodLamping.com> 04/27/04 10:50AM >>>  
Mr. Roberts,

Per the request of Bill Ellis we would like to check dates of availability for the deposition of Christopher Kearney. Please let us know if the dates of May 6 or 7, (any time), or May 10th after 1:30 p.m. will work for you and your client. If we do not receive a response we will issue a notice for one of the above-mentioned dates.

Sincerely,

Christine L. Zerges

**From:** Michael Roberts [mroberts@Graydon.com]  
**Sent:** Wednesday, April 28, 2004 9:40 AM  
**To:** William R. Ellis  
**Cc:** ck Rudy@aol.com; Michael Roberts; ematan@mgwlaw.com  
**Subject:** RE: Jefferson-Pilot v. Kearney

We are not producing Mr. Miller or Mr. Kearney or proceeding with their depositions until we have agreement on my ability to take depositions also before the hearing. Cancel your trip to California.

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 09:30AM >>>  
Mr. Roberts, As always it appears that any attempt to come to a reasonable accommodation meets with your nearly impossible conditions, which you say are non-negotiable. As the case now stands, I am entitled to take the two depositions already set. This includes, Mr. Miller on the 3rd and Mr. Kearney on the 10th. I will advise you of the status and any objections to the other witnesses as soon as I can. I have not had time to evaluate the potential relevance or even the involvement, if any, of the other witnesses you have noticed. I would hope we can arrange to do all of the depositions in a week to 10 day period, which I again suggest, would be after the motions have been ruled upon to see if we can save our clients the potentially unnecessary costs.

-----Original Message-----  
From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Tuesday, April 27, 2004 9:32 PM  
To: William R. Ellis  
Subject: RE: Jefferson-Pilot v. Kearney

Big Brother:

In your Motion For Protective Order you state for the first time that JP-DMS will make the witnesses available for deposition in Massachusetts and pay for my airfare and accommodations if that is an agreeable venue to defendant.

We will agree to Massachusetts as the venue under the following conditions:

1. All witnesses I have designated for deposition be made available for deposition in Massachusetts during a 3-4 day timeframe during the week of May 10. I will, however, agree to allow you to contest (and I will oppose) with Judge Hogan/Spiegel my ability to depose: Bonsall, Dempsey, and Johnson.
2. You (or your client) purchase my plane ticket (on Delta to and from Cincy on a nonstop flight of my choosing - I'll fly coach you can fly first class) and prepay my hotel ( I will stay in the same hotel as you so the cost is the same). I will not incur these expenses and later seek reimbursement.

If these conditions are acceptable, then we can proceed and you can depose Mr. Miller on May 3 and Mr. Kearney on May 10. We also may be able to take Mr. Kearney's deposition in Massachusetts on May 10 to accelerate our schedule that week. If these non-negotiable conditions are not acceptable, let me know by noon on Wednesday.

Mike

Michael A. Roberts  
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**From:** Michael Roberts [mroberts@Graydon.com]  
**Sent:** Wednesday, April 28, 2004 10:44 AM  
**To:** William R. Ellis  
**Cc:** Michael Roberts; ematan@mgwlaw.com  
**Subject:** RE: Jefferson-Pilot v. Kearney

Why do you need dozens of emails to understand our position. Let me be clear:

1. We require that the depositions we've requested take place before a summary judgment hearing. The information you've refused to provide and which we have requested pursuant to Civil Rule 30, 33, and 34 is material parol evidence on the question which is the subject of that hearing - in addition to being material evidence on Mr. Kearney's claims. If we cannot accomplish the depositions I've requested by May 15, the hearing must be continued.

2. Under NO circumstances will you be unilaterally entitled to depositions prior to the hearing and not provide Mr. Kearney with the Rule 30, 33, and 34 testimony and information he has requested.

If you still do not understand these simple points call me and I'll explain them to you more slowly.

Mike

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 10:36AM >>>

Mr. Roberts, I can not state any more clearly that I am not denying you depositions. I am trying to accommodate you by arranging those depositions upon which we can agree. Not being all powerful I can only do what is possible to do. I have called the client and we are seeing what arrangements can be made. If there is still a problem with Miller and Kearney let's talk with Judge Hogan.

-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Wednesday, April 28, 2004 10:19 AM  
To: William R. Ellis  
Cc: Michael Roberts; ematan@mgwlaw.com  
Subject: RE: Jefferson-Pilot v. Kearney

Big Brother:

We need to hear today, otherwise neither Miller's deposition or Kearney's deposition will proceed. Counsel - you can't take expect to be able to demand depositions and at the same time deny an opposing party from taking depositions. If I am wrong on this point show me the Rule.

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>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 10:22AM >>>

I will contact the client and get back to you today.

-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Wednesday, April 28, 2004 10:13 AM

**From:** Michael Roberts [mroberts@Graydon.com]  
**Sent:** Wednesday, April 28, 2004 1:13 PM  
**To:** William R. Ellis  
**Subject:** RE: Jefferson-Pilot v. Kearney

I'm here

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 01:14PM >>>  
Are you available to discuss the issue with Judge Hogan, if he is available this afternoon?

-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Wednesday, April 28, 2004 12:21 PM  
To: William R. Ellis  
Subject: RE: Jefferson-Pilot v. Kearney

You are not taking Miller's deposition on Monday unless you agree to the terms I proposed.

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 12:21PM >>>  
Mr. Roberts, I do not need your permission to take these depositions. I have a legitimate notice for Mr. Miller and the confirmed availability of all concerned. I have a court order for the plaintiff's deposition and am filing a notice today. I will agree to delay these depositions upon agreement to permit me to take them later. That was the only question in my last E-mail and I do not have an answer. Are you willing to call Judge Hogan or do you want to make some reasonable agreement?

-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]  
Sent: Wednesday, April 28, 2004 11:07 AM  
To: William R. Ellis  
Cc: ckrudy@aol.com; Michael Roberts; ematan@mgwlaw.com  
Subject: RE: Jefferson-Pilot v. Kearney

Here we go again. This is amazing. Let me try to even make it simpler:

1. We require depositions before the hearing, regardless of what date the hearing occurs.
2. Once I have your commitment on paying my expenses to take the depositions I've requested for dates and times which are at least 10 days before the MSJ hearing, I will permit you to take Mr. Miller's and Mr. Kearney's depositions also before the hearing.

Do you now understand our position? Does DMS pay you by the email?

Mike

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>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 11:08AM >>>  
I am doing my best. Do I have your agreement to take Mr. Miller and Mr. Kearney at a later date, or must I proceed as scheduled?

-----Original Message-----  
 From: Michael Roberts [mailto:mroberts@Graydon.com]  
 Sent: Wednesday, April 28, 2004 10:19 AM  
 To: William R. Ellis  
 Cc: Michael Roberts; ematan@mgwlaw.com  
 Subject: RE: Jefferson-Pilot v. Kearney

Big Brother:

We need to hear today, otherwise neither Miller's deposition or Kearney's deposition will proceed. Counsel - you can't take expect to be able to demand depositions and at the same time deny an opposing party from taking depositions. If I am wrong on this point show me the Rule.

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 10:22AM >>>  
 I will contact the client and get back to you today.

-----Original Message-----  
 From: Michael Roberts [mailto:mroberts@Graydon.com]  
 Sent: Wednesday, April 28, 2004 10:13 AM  
 To: William R. Ellis  
 Subject: RE: Jefferson-Pilot v. Kearney

You have my offer: give me times to take the depositions I've requested by May 15 and proceed with Miller. What is your answer?

>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 10:09AM >>>  
 Mr. Roberts, The notice of deposition of Mr. Miller stands. I will be willing to delay the deposition upon your written agreement that the deposition can be taken out of time. I have a court order permitting me to take the deposition of Mr. Kearney by the 10th and you advised me that that date was acceptable and notice has been sent. Unless ordered otherwise or by agreement of counsel to take the depositions at another time I have no option but to proceed. I would prefer the agreement.

-----Original Message-----  
 From: Michael Roberts [mailto:mroberts@Graydon.com]  
 Sent: Wednesday, April 28, 2004 9:50 AM  
 To: William R. Ellis  
 Cc: ckrudy@aol.com; Michael Roberts; ematan@mgwlaw.com  
 Subject: RE: Jefferson-Pilot v. Kearney

We intend to proceed with the depositions before the hearing because I strongly suspect we will discover information material to the hearing.

Also where are my documents? They too are likely relative to the hearing.

Without this documentary information and testimony, we will likely require a continuance on the hearing date. My client's interests require that he have all information discoverable and proper before his rights are determined by a court. Parol evidence is appropriate since the agreement does not unambiguously exclude COLA, SSS, premium waiver, or lifetime benefits.

Provide me with dates to depose the witnesses.

Do you now call me Mr. Roberts because of the Jeffries outcome?

Your pal, Mike

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 511 Walnut Street  
 Cincinnati, Ohio 45202-3157

**From:** Michael Roberts [mroberts@Graydon.com]  
**Sent:** Wednesday, April 28, 2004 3:53 PM  
**To:** William R. Ellis  
**Cc:** Ckrudy@aol.com; Michael Roberts; ematan@mgwlaw.com  
**Subject:** Re: Kearney

Big Brother:

As indicated by Judge Hogan I expect that you will forthwith:

1. Coordinate for deposition in Springfield Massachusetts during the week of May 10: (1) JP; (2) DMS; (3) Robert Mills; (4) William Hughes; (5) Todd Dittmar; (6) Harold Shelton; (7) Robert Bonsall; (8) Phyllis Harden; (9) Janet Beattie; (10) J. L. Roberson; and (11) Robert Maxwell.
2. As indicated in your Motion For Protective Order, I also expect that you will pay my airfare and hotel accommodations in Springfield. As I wrote yesterday, given my past experience with you and your refusal to pay me for expenses you were obligated to pay, I require that you directly purchase the airfare and prepay my hotel bill.
3. Once you have confirmed the above, we will provide you with dates to take the depositions of Clint Miller and Chris Kearney. I do not trust that you will perform your obligations so we are unwilling to produce Mr. Miller by agreement for May 3, but will produce him at your convenience when the above are confirmed.
4. If you do not produce Mr. Bonsall before May 15, consistent with Judge Hogan's decision, I will expect you to produce him in Cincinnati at a later time or pay my hourly rate and expenses for a return trip to Springfield.
5. I will file a motion concerning the depositions of Attorneys Johnson and Dempsey.

Your pal, Mike

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>>> "William R. Ellis" <WREllis@WoodLamping.com> 04/28/04 03:40PM >>>

Mr. Roberts, confirming our phone call I am attempting to contact my client to arrange all of the requested depositions other than the Lawyers. The list I am working from the notices of deposition you filed on the 27th. I'll advise you of the dates but the likelihood is that we will end up doing these the week of the 10th.

William R. Ellis